IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 38979 of 2003(M)

PETITIONER:

K.DHARMAPALAN, S/O.KUNJUPILLAI, AGED 44 YEARS, EX.HAVILDAR, RESIDING AT CHIRAKKONATHU HOUSE, ODANAVATTOM P.O. KOLLAM, KERALA.

BY ADV. SRI.S.HARIKRISHNAN
SRI.L.SATHEESCHANDRA BABU
SRI.JAMES ABRAHAM (VILAYAKATTU)

RESPONDENTS:

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1. UNION OF INDIA, REP. BY ITS SECRETARY, MINISTRY OF DEFENCE, NEW DELHI.

2. THE CHIEF CONTROLLER OF DEFENCE ACCOUNTS (PENSION), ALLAHABAD.

3. THE RECORDS OFFICER, ARMY ORDINANCE CORPS RECORDS, SECUNDERABAD.

BY ADV. SRI.DENU JOSEPH, ADDL.CGSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 38979 of 2003(M)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE SUMMARY & OPINION ABOUT THE DISEASE OF THE PETITIONER BY THE ARMY DOCTOR.

EXT.P2: COPY OF THE SUMMARY & OPINION DATED 23.3.1995 BY THE SPECIALIST OPHTHALMOLOGIST, 158 BASE HOSPITAL.

EXT.P3: COPY OF THE COMMUNICATION TO THE PETITIONER BY THE 3RD RESPONDENT VIDE LETTER NO.6915906/PEN/DIS-III DATED 12.2.1997.

EXT.P4: COPY OF THE COMMUNICATION NO.C/6915906/PEN/DIS-III DATED 16.6.1997.

EXT.P5: COPY OF THE COMMUNICATION NO.7(1658)/97.D(PEN.A&AC) DATED 21.9.98 REJECTING THE APPLICATION FOR DISABILITY PENSION BY THE 1ST RESPONDENT.

EXT.P6: COPY OF THE PETITION BEFORE THE PENSION ADALATH SUBMITTED ON 17.6.2000.

EXT.P7: COPY OF THE REVIEW PETITION BEFORE THE HON'BLE DEFENCE MINISTER SUBMITTED ON 5.6.2002.

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K.BALAKRISHNAN NAIR,J.

WP(C)NO.38979 OF 2003-M

Judgment

The petitioner has approached this Court, seeking the following reliefs :

> *"i. declare that the petitioner is entitled to be granted with disability pension w.e.f. the date of invalidation from military service.*
>
> *ii. issue a writ of mandamus or other appropriate writ, order or direction, commanding the respondents to grant disability pension to the petitioner w.e.f. the date of invalidation from military service.*
>
> *iii. quash Exts.P1 & P5 by the issuance of a writ of certiorari or other appropriate writ, order or direction.*
>
> *iv. issue a writ of mandamus or other appropriate writ, order or direction, commanding the 1st respondent to consider and pass orders on Ext.P7 review petition in view of the Full Bench judgment of this Hon'ble Court reported in 2003(3) KLT 362."*

Even after the lapse of three years of admitting the Writ Petition, when the respondents did not file any counter affidavit, this Court on 14.03.2007, passed the following order :

> *"In case no counter affidavit is filed within one month, it will be taken that the respondents have no objection in allowing the Writ Petition."*

It is seen that even on 14.06.2007, no counter affidavit has been filed in this Writ Petition. No one appeared for the respondents also. In view of the above position, the Writ Petition is

disposed of, directing the 1st respondent to consider and pass orders on Ext.P7 in accordance with law within three months from the date of receipt of a copy of this Judgment, taking into account, the law laid down by the Full Bench of this Court in ***Baby v. Union of India*** (2003(3) KLT 362), uninfluenced by the stand taken in Ext.P5.

18.06.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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